

**Letter of Findings Number: 07-0384  
Sales and Use Tax  
For the Tax Year 2005**

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**ISSUE**

**I. Sales and Use Tax - Imposition.**

**Authority:** IC § 6-2.5-1-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8; IC § 6-8.1-5-1; [45 IAC 2.2-4-26](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-15](#).

Taxpayer protests the imposition of sales and use tax on its purchase of two trucks and a dozer.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation engaged in construction services. After an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer owed sales and use tax for the 2005 tax year. The Department found that Taxpayer had purchased two trucks and a dozer without paying sales tax at the time of purchase, and assessed use tax on the purchases. Taxpayer protested this assessment of use tax. A hearing was held, and this Letter of Findings results. Additional facts will be supplied as required.

**I. Sales and Use Tax - Imposition.**

**DISCUSSION**

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found that Taxpayer had purchased two trucks and a dozer without paying sales tax at the time of purchase, and assessed use tax on the purchases.

IC § 6-2.5-2-1 provides:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2(a) provides:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Accordingly, Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer failed to pay sales tax at the time of purchase, the Department found that the purchases were subject to use tax.

At the time of purchase of the trucks and the dozer, Taxpayer presented the vendor(s) with a ST-105 General Sales Tax Exemption Certificate, which was marked for an exemption for a "retailer, wholesaler, or manufacturer for resale only." Initially, Taxpayer asserted that the trucks and the dozer purchases were exempt from sales and use tax because the equipment was used by Taxpayer to provide strip mining services. The Department, in the investigation summary report, determined that Taxpayer did not meet the exemption found in [45 IAC 2.2-5-9\(e\)](#), for equipment used by a mine owner or operator engaged in mining or extraction, or the exemption found in [45 IAC 2.2-4-26\(e\)](#), for equipment used by a contractor as an improvement to real estate. Thus, Taxpayer used the equipment to provide strip mining services as a service contractor that provided a service for the coal mine operators/owners.

In its protest, Taxpayer asserts that the trucks and the dozer were not used in providing strip mining services, but were purchased for resale. IC § 6-2.5-5-8(b) provides for an exemption from sales tax for purchases of tangible personal property that are purchased to be resold in the Taxpayer's ordinary course of business.

The Department refers to [45 IAC 2.2-5-15](#), which clarifies the purchase for resale exemption, as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from the tax if all of the following conditions are satisfied:

(1) the tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) *The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and*

(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of General rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendering of services or performance of work with respect to the property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. *Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.*

(3) The property must be resold, rented or leased in the same form in which it was purchased.

*(Emphasis added.)*

Taxpayer's primary occupation is providing construction services. Taxpayer was not in the business of buying and renting trucks or dozers. Moreover, a review of the Department's records shows that Taxpayer was not registered as retail merchant to collect sales tax during the year at issue. Since Taxpayer was not occupationally engaged in the purchase and renting of tangible personal property, Taxpayer's purchase of the trucks and the dozer do not qualify for exemption from the sales and use taxes pursuant to IC § 6-2.5-5-8(b). Thus, Taxpayer's purchases of the trucks and the dozer were like any other retail transaction. Accordingly, Indiana sales tax was due at the time the trucks and the dozer were purchased, and Taxpayer incurred its sales tax liability at the time of purchase and possession of the trucks and the dozer. Taxpayer's subsequent sales of the trucks and the dozer does not have a "reach-back" effect negating the Taxpayer's responsibility to pay the sales tax at the time of purchase.

#### **FINDING**

The Taxpayer's protest is respectfully denied.

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